

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°:

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

**MONTREAL, MAINE & ATLANTIC CANADA CO.
(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)**, a legal person incorporated under the laws of
the province of Nova Scotia, having a place of
business at 1, Place Ville-Marie, 37th Floor,
Montréal, Québec H3B 3P4 (at the offices of its
attorney ("fondé de pouvoir"));

PETITIONER

and

**RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)**, a legal person, having
a place of business at 1981, McGill College,
Montréal, Québec, H3A 0G6;

PROPOSED MONITOR

PETITION FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))

TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Montreal Maine & Atlantic Canada Co ("MM&A" or the "Petitioner") is insolvent and is a company to which the CCAA applies, as set forth below;
2. The Petitioner provides services as a shortline freight railway carrier operating various rail lines in the province of Québec. It is a subsidiary of Montreal Maine & Atlantic Railway Ltd. ("MM&AR"), a Delaware corporation whose head office is located in the State of Maine and who operates lines *inter alia* in the States of Maine and Vermont;
3. The Petitioner urgently requires a stay of proceedings from its creditors and from the numerous claims made or anticipated to be made against it, including a class action law suit commenced in the province of Québec against it, MM&AR, their joint liability insurer

(the “**Liability Insurer**”) and other defendants (said proceedings not having yet been served upon the Petitioner) and several letters of demand, including from the municipality of Lac-Mégantic with respect to losses or amounts incurred associated with a tragic train derailment which intervened on July 6th, 2013 in Lac-Mégantic, Québec, the whole as more fully set forth below. Proceedings have also been instituted against MM&AR and other third parties in the United States of America. MM&AR, together with the Petitioner and other members in its corporate group are collectively referred to herein as the “**Petitioner’s Corporate Group**” and are listed in Schedule “A” hereto. The members of Petitioner’s Corporate Group, and their respective directors, officers and employees and the Liability Insurer who are defendants to one or more of the proceedings referred to above are listed in Schedule “B” hereto and are collectively referred to herein as the “**Non-Petitioner Defendants**”;

4. The claims and potential claims referred to above are related to the potential liability of the Petitioner and/or others (i) towards persons and legal persons having sustained losses as a result of the tragic train derailment that occurred in Lac-Mégantic, Québec (collectively, the “**Personal Claimants**” and the claims and potential claims held by the Personal Claimants collectively, the “**Personal Claims**”), as set forth more fully below, and (ii) towards governmental or environmental authorities and others (collectively, the “**Environmental Claimants**”) with respect to environmental claims and potential environmental claims associated with said derailment (collectively, “**Environmental Claims**”) and towards other claimants with respect to other claims or potential claims associated with the derailment. The Personal Claimants, the Environmental Claimants and the claimants with respect to other claims and potential claims related to said derailment are referred to herein as, the “**Train Derailment Claimants**” and the Personal Claims, the Environmental Claims and the other claims and potential claims related to said derailment are collectively referred to herein as the “**Train Derailment Claims**”;
5. While Petitioner holds insurance covering certain of the Train Derailment Claims and the defense costs of Petitioner and MM&AR, as the amount of said Train Derailment Claims is ever increasing, it has become evident that in the event of a determination that Petitioner and/or MM&AR are liable and that the Train Derailment Claims are valid, the amount of the insurance coverage will not be sufficient to cover all of the Train Derailment Claims;
6. The protection sought by the Petitioner hereunder is for the purpose of implementing a successful plan of compromise or arrangement of the Train Derailment Claims and any other indebtedness of the Petitioner and providing the Petitioner with the necessary forum to:
 - a) Set up a claims process to address and settle the various claims and potential claims against it;
 - b) Negotiate with its Liability Insurer and other insurers payment of the insurance indemnities for the benefit of the Train Derailment Claimants and other claimants who may be entitled to such indemnity;

- c) Preserve and maximize the value of the business in order to realize the maximum value for its various stakeholders, including potentially the Personal Claimants, the Environmental Claimants and other claimants and creditors;
- 7. Concurrently with the present proceedings, it is expected that the Petitioner's parent, MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;

II. THE PETITIONER'S CORPORATE STRUCTURE AND BUSINESS

i) Corporate Background

- 8. The Petitioner is incorporated under the laws of the province of Nova Scotia, namely the *Companies Act*, R.S., c. 81 ("NSCA") as an unlimited liability company. It was incorporated on May 6, 2002 and has its registered office in said province, located at 1959, Upper Water Street, Suite 800, in the City of Halifax. However, it does not operate in the province of Nova Scotia, nor does it hold any assets in said province;
- 9. All of the Petitioner's assets and operations are in the province of Québec. It has been registered in the province of Québec pursuant to *An Act respecting the legal publicity of enterprises*, R.S.Q., c. P-44.1 ("LPEA") since November 14, 2002;
- 10. Since its registration in the province of Québec pursuant to the LPEA, it has had and has a place of business at its *fondé de pouvoir*'s office in Montreal (the *fondé de pouvoir* being the undersigned attorneys). It also has a place of business at 191 Victoria Street in Farnham, Québec;
- 11. As indicated above, the Petitioner operates as a shortline freight railway carrier within the province of Québec and holds a Certificate of fitness under the *Canada Transportation Act*, S.C. 1996, c. 10 ("CTA"). MM&AR operates as a railway carrier in the United States;
- 12. The Petitioner as stated above is a company to which the CCAA applies. Petitioner is not constituted as a railway by charter or under special legislation (such as under railway acts). It is constituted as an "ordinary" company under the NSCA, as stated above (additionally, the *Railways Act* of Nova Scotia, SNS 1993, c. 11 (the purpose of which is to ensure the safe operation of railways in the province of Nova Scotia) likely only applies to companies which operate or intend to operate, railways within the province of Nova Scotia, thus said statute does not apply to the Petitioner);
- 13. While the CCAA, as the *Bankruptcy and Insolvency Act* ("BIA") and the *Winding Up and Restructuring Act* ("WURA"), excludes "railway companies" from the definition of "company", historically, these statutes referred to railway companies created and governed by specific railway legislation or by charter. Accordingly, they do not exclude a

company incorporated by ordinary corporate legislation that may operate as a freight railway carrier such as in the case of the Petitioner;

ii) **Business and Structure**

14. The Petitioner is a subsidiary of MM&AR, who in turn is a subsidiary of Montreal Maine & Atlantic Corporation, a Delaware corporation having its head office in the State of Maine in the United States (the chart illustrating the corporate structure of the Petitioner's Corporate Group being filed in support hereof as Schedule "A");
15. Petitioner operates rail lines in corridors in the province of Québec extending from Saint-Jean to Farnham, from Bedford to Sainte-Rosalie, as well as from Farnham through Lac-Mégantic to the U.S. border, where it joins the lines of MM&AR. The transportation of products via the States of Vermont and Maine is effected via MM&AR;
16. In effect, Petitioner with its parent, MM&AR, operate in an integrated, international shortline freight railroad system (the "**MMA System**") that has 510 route miles of track in Maine, Vermont and Quebec. The MMA System is a substantial component of the transportation system of Northern Maine, Northern New England, Quebec and New Brunswick. Main-line operations in the MMA System are conducted regularly between Millinocket and Searsport, Maine, and from Brownville Junction, Maine to Montreal, Quebec. Service is also provided between Farnham, Quebec and Newport, Vermont to connect with the northeastern U.S. westbound trains to Montreal. As a whole, the System provides:
 - a) the shortest rail transportation route between Maine and Montreal and a critical rail artery between Saint John, New Brunswick and Montreal;
 - b) strategic links to the Canadian Pacific Railroad, the Canadian National Railroad, and Guilford Rail System and beyond to the North American rail system;
 - c) outlets for major producers of paper, lumber, wood and agricultural products in eastern and northern Maine; and
 - d) in-bound transportation for chemicals and other products used by paper producers and consumers in Maine.
17. The Petitioner and MM&AR while separate companies have fully integrated business operations and accounting. Accordingly, they share part of the expenses and costs related to the management of both companies, including costs related to the head office of MM&AR (where the management personnel shared by both companies is located) in a proportion of 60% being assumed by MM&AR and 40% by the Petitioner;
18. Each company assumes its own particular expenses (specifically incurred by the entity for its own operations). As a result, the Petitioner is responsible for the purely "Canadian" expenses, such as the payment of its employees, its Canadian providers and suppliers, the building in Farnham, its fuel consumption in Canada, etc.;

19. The greater part of the income is collected in the United States by MM&AR and the latter provides to the Petitioner the funding for the Petitioner's expenses;
20. In practice, as MM&AR receives the income, it transfers to a bank account of the Petitioner, held at the Canadian Imperial Bank of Commerce in Toronto, the portion of funds required to pay the expenses of the Petitioner. Additionally, the Petitioner at times collects directly certain payments; however, these amounts are not significant compared to those that are collected by its parent company in the U.S.;

III. EVENTS LEADING TO THE PRESENT PETITION

21. The Petitioner and its U.S. parent are currently facing significant challenges as a result of the tragic train derailment that occurred in the early hours of July 6, 2013 in the municipality of Lac-Mégantic, province of Québec, and that involved the derailment of a freight train operated by the Petitioner and consisting mainly of 72 tank cars, each carrying petroleum crude oil and 5 locomotive units (the "Derailment");
22. The transportation of the crude oil had begun in New Town, North Dakota, by Canadian Pacific Railway ("CP") who transported it to the Saint-Luc Interchange Yard, in Greater Montreal, Quebec, from where the transportation was continued by the Petitioner. The crude oil was to have been transported via Petitioner's line and thereafter transported by MM&AR in the State of Maine, with its ultimate destination being Saint John, New Brunswick (the transportation by railway in New Brunswick was to have been handled by another railway line);
23. While investigations are still ongoing, it is known that following the Derailment, fire and explosions ensued and a great number of lives were lost (established by the authorities at 47 people), injuries were suffered and destruction of and damage to property occurred. Other significant and important damages include the closing of or interruption of businesses and environmental damage that is still being assessed. Evacuations (of approximately 2 000 persons) from the area where the Derailment and explosions occurred were ordered and many evacuees to date have still not been able to return to their premises, either because of the destruction of their premises or by order of the authorities due to risks associated with contamination or other;
24. Following the tragic events, claims were made either verbally or through letters of demand or proceedings against *inter alia* the Petitioner and corporate members of its group, including MM&AR and the Liability Insurer and continue to be made against them, in Québec and in the United States or both, as set forth below;
25. To date, the claims include the following:
 - a) A class action ("Class Action") instituted against the Petitioner, MM&AR, the Liability Insurer and others in the Superior Court of Québec, district of St-François, on behalf of victims of the Derailment, seeking, *inter alia*, to have the Petitioner and other defendants declared solidarily liable for the damages suffered by each member of the class and to pay a sum to be determined in compensation of the damages suffered. A copy of the Class Action is attached herewith as Exhibit R-1;

- b) Several actions instituted by individuals acting as special administrators of the estates of deceased persons against MM&AR and other defendants in the Circuit Court of Cook County (Chicago), in the State of Illinois (U.S.A.), claiming judgment for injuries and losses that are compensable under U.S. legislation (to date 13 separate actions have been filed and served, 11 of which claiming an indemnity in excess of \$1,000,000 each), as appears from a copy of the list of complaints at law (the "List of Complaints") filed in support hereof as **Exhibit R-2**;
- c) Letters of demand from the Municipality of Lac-Mégantic, the first letter claiming an amount of \$4,149,187.48 and a second letter increasing the amount claimed to the sum of \$7,796,948.67, claiming payment of costs paid by it, as appears from a copy of the letters filed *en liasse* in support hereof as **Exhibit R-3**;
- d) Order issued by the Minister of Sustainable Development, Environment, Wildlife and Parks (the "Minister of Environment") dated July 29, 2013 issued against the Petitioner MM&AR and other defendants ordering that immediate steps be taken in relation to the environmental damage *inter alia* to proceed with remediation, containment and pollutant cleanup, as appears from the letter from the Ministère de la Justice of same date and order filed *en liasse* in support hereof as **Exhibit R-4**;
- e) Notice of claim from Tafisa Canada, owner of production facilities in Lac-Mégantic with respect to a lawsuit resulting from the Derailment, inoperability of the MM&A Rail Line and the inability to ship its products to its customers, as appears from a copy of the Notice of claim filed in support hereof as **Exhibit R-5**;
- f) Notice of intent to file a claim from Western Petroleum Company for loss of rail cars leased by it and that were part of the train operated by the Petitioner that derailed, as appears from a copy of the Notice of intent filed in support hereof as **Exhibit R-6**;
- g) Letter of demand from Canadian Pacific Railway claiming an amount in excess of \$1,000,000 for, *inter alia*, equipment lease and AAR car repairs and other, as well as advising of its intention to offset an amount of \$660,460 CAD "for traffic that did not make the destination and empties that did not return to Canadian Pacific", the whole as appears from a copy of the letter filed in support hereof as **Exhibit R-7**;
- h) Numerous letters of demand from various persons or their insurers concerning losses sustained to their properties or businesses, as appears from a copy of the list of letters of demand (the "List of Letters of Demand") filed in support hereof as **Exhibit R-8**;

26. The Petitioner and members of Petitioner's Corporate Group are awaiting the results of the investigation being conducted by numerous authorities at several levels, including the Federal Government, through the R.C.M.P., the Transport Safety Board and Transport Canada, and the Québec Provincial Government, through the Sûreté du

Québec and search warrants have been issued by certain of these governmental or regulatory authorities or at their request;

27. In the meantime, while the Petitioner is deploying efforts to maintain railway transportation services where possible to its customers in Québec, its railway transportation services have been greatly reduced in Québec, and by MM&AR in the United States, as a result of the unavailability of the Lac-Mégantic segment of the line;
28. Moreover, as appears from the letter and the order from the Minister of Environment (Exhibit R-4), an order ("Cleanup Order") was issued on July 29, 2013 pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("EQA") ordering *inter alia* the Petitioner, MM&AR and others to recover and remove any contaminant emitted, deposited or discharged into the water or unto the soil following the Derailment and to dispose of same in an authorized site and as prevent the petroleum and all other contaminants from being propagated into the environment, including in the air, the soil and the water (both surface and underground) and to provide the Minister of Environment or any person designated by the latter with any relevant information requested with respect to the work pursuant to said order as well as execute all necessary cleanup and decontamination work and the required mitigation and monitoring measures with respect to the environment, the whole as more fully detailed in the Cleanup Order;
29. As appears from the foregoing, the contamination in question occurred following the Derailment and thus has already occurred and is not due to any present or ongoing business activities of the Petitioner;
30. Moreover, the contamination affects in great part land that does not belong to, is not in the possession of and is not under the control of the Petitioner, the only portion of land owned by the Petitioner affected by the contaminants being the parcel of land on which are located the railway tracks in Lac-Mégantic;
31. Although Petitioner, since the Derailment, has undertaken and tried to assume and execute its obligations under the various applicable environmental legislation (federal and provincial) to the extent of its capacity and resources, it has become evident that it does not possess the financial capacity to do so, especially in light of the position taken by the Liability Insurer with respect to indemnification under its policy of insurance;
32. The Liability Insurer, while recognizing an obligation to indemnify under the policy, maintains, because of the sheer number of claims being made and the amounts being claimed, that it cannot provide for payment of covered environmental cleanup costs to the detriment of the third party claimants, especially where the amounts of the claims exceed the limit of coverage;
33. Thus, a great part of the Cleanup Order has a definitive monetary implication and it is evident that Petitioner is not and will not be able to perform all of the cleanup nor pay the services of third parties to do so. At present, it is estimated that pollutant cleanup costs will exceed 200 million dollars CDN;

34. While Petitioner and MM&AR have fully cooperated with the environmental authorities, have met with their representatives and have given assistance in connection therewith, and while the Petitioner and MM&AR have submitted the Train Derailment Claims, including the Environmental Claims, to the Liability Insurer, the latter has failed to make any payments under the insurance policy in this regard. In addition, neither the Petitioner nor MM&AR are able to make payment at this stage of sums incurred or to be incurred given their financial situation as described below;
35. It is financially impossible for the Petitioner to continue the operations and the provision of services without the benefit of the protection from its creditors under the CCAA, which is sought by the present Petition, and it is to be feared that the financial situation of the Petitioner will deteriorate and that the assets will not be sufficient to satisfy all of the current and potential liabilities of the Petitioner;
36. As indicated above, while the Petitioner holds insurance covering certain liabilities and defense costs of Petitioner and MM&AR, as will be set forth below, it has become evident that the amount of coverage will not be sufficient to cover all potential liabilities associated with the Train Derailment Claims;
37. Given the current situation, the Petitioner and MM&AR are seeking a solution and are preparing a plan (the "**Plan**") in the best interests of all of the stakeholders and potential stakeholders, including the Train Derailment Claimants and other creditors or potential creditors that:
 - a) Could allow the partial and temporary resumption of the operations and delivery of services to customers who are in need of the services or the delivery of products by train;
 - b) Preserve and maximize the value of the assets for the benefit of all the creditors and potential creditors;
 - c) Allow for the orderly distribution of the funds which will be available to any claimant or a creditor entitled to a claim or a compensation;
 - d) Devise a simpler, less costly, more effective and more rapid process to deal with all of the claims or potential claims than legal proceedings in Canada and the U.S., the multiplicity of which may only contribute to the erosion of the value of the various assets and insurance indemnities;
38. The Petitioner is therefore seeking relief under the CCAA as a vehicle for achieving a global resolution of the claims and potential claims;

IV. PETITIONER'S FINANCIAL SITUATION

39. Petitioner files in support hereof as **Exhibit R-9** a copy of its unaudited balance sheet as at July 31, 2013 (the "**Balance Sheet**");

40. As appears from the Balance Sheet, as at July 31, 2013, the Petitioner owned assets having a net book value of \$17,974,000, these include the following principal assets of the Petitioner, most of which are illiquid in nature:

ASSETS		
a)	Cash:	\$274,000
b)	Accounts receivable, trade:	\$273,000
c)	Prepaid expenses:	\$29,000
d)	Buildings, land and track structure:	\$17,384,000
e)	Security deposits	\$14,000
	Total	\$17,974,000

41. As further described in part V below, it appears from the Balance Sheet, as at July 31, 2013, that the total liabilities of the Petitioner (excluding (i) the Train Derailment Claims; (ii) the guarantee in favor of the United States of America, represented by the secretary of transportation acting through the administrator of the Federal Railroad Administration ("FRA"); and (iii) the joint liability for a line of credit in the amount of \$6,000,000 granted by Wheeling & Lake Erie Railway Company ("WLE")) were in excess of \$48,158,000;

42. As mentioned above, the Petitioner and MM&AR hold insurance policies with respect to civil liability and property insurance. These policies are the following:

- a) Canadian Railroad liability insurance policy with XL Insurance Company Ltd. under number RLC00308301 for a per occurrence limit of \$25,000,000 (USD) and covering, amongst others: Evacuation expenses, Fire Suppression expenses, Pollution Cleanup expenses, Bodily injury and Property damages;
- b) Property and Commercial Inland Marine policy with Traveler's Property and Casualty Company of America under number QT-630-6357L188-TIL-13 subject to various limits and sub-limits and covering, amongst others: property, rolling stock, track and repairs and business interruption;

43. Both of the above policies are applicable subject to their terms and conditions to losses sustained either by third parties or by Petitioner or by others;

44. It should be noted that Petitioner has not received any indemnity under either of said policies to date, notwithstanding claims presented;

45. A statement of Petitioner's projected cash flow prepared by Petitioner is attached hereto as **Exhibit R-10**, for the period beginning July 19, 2013 and ending September 27, 2013;

46. Said cash flow statement was prepared based on the following key assumptions: (1) that the Petitioner will continue to pay ordinary course obligations, including obligations to employees; (2) that all of the Petitioner's suppliers will wish to operate on a "cash-on-delivery" basis going forward and (3) that MM&AR will be allowed, throughout the anticipated Chapter 11 proceedings, to continue to fund Petitioner's expenses;
47. As the operations of the Petitioner are expected to remain cash positive, as appears from the projected cash flow (Exhibit R-10) and provided the Petitioner obtains the Court protection sought hereunder, the Petitioner will be able to meet its day-to-day obligations for the stay period sought in the present Petition;

V. CREDITORS OF THE PETITIONER

i) **Secured Creditors**

48. The secured creditors are the following:

Secured creditors currently holding registered security against the assets of the Petitioner:

- a) The FRA, to whom Petitioner granted a corporate guarantee with respect to amounts owing by its corporate parent MM&AR (the outstanding balance being approximately \$27,500,000 and MM&AR being at present current on its obligations). The FRA holds a security interest in all of the debtors present and future acquired personal property registered in the Personal Property Register of Nova Scotia ("PPRS"); and a conventional hypothec without delivery in the amount of \$81,600,000 registered in the Register of Personal and Movable Real Rights ("RPMRR") in Québec covering the universality of the movable and immovable property, corporeal and incorporeal, present and future, of the Petitioner. It has further registered an immovable hypothec against the immovable property referred to in paragraph 40, with the exception of the rail line segment from Bedford to Sainte-Rosalie; and
- b) Right of ownership of Lessor (under a leasing agreement) held by RoyalNat Inc. with respect to certain equipment;

A copy of extracts of the computerized records of the PPRS and the RPMRR are filed *en liaison* in support hereof as **Exhibit R-11**;

Potential secured creditors

- a) In the event of the issuance of an Initial Order hereunder, apart from any charges that may be created as requested hereunder, Section 11.8(8) provides a charge with respect to any claim, if any, by Her Majesty in Right of Canada or a province against the Petitioner for any costs they may have expended or may in the future expend, for remedying any environmental condition or environmental damage affecting real property of the Petitioner, the charge to apply on said real property and on any other real property of Petitioner that is contiguous thereto and that is related to the activities that caused the environmental condition or environmental damage;

ii) **Unsecured Creditors**

49. The Petitioner has a number of unsecured creditors who are owed in excess of \$48,158,000 in the aggregate, consisting of:

Unsecured Creditors

- a) Accounts payable and accrued liabilities: approximately \$4,758,000;
- b) Due to parent company: \$43,400,000;
- c) Total: \$48,158,000

Other potential unsecured creditors

In addition, the Petitioner may be liable for the following amounts:

- a) The unsecured portion of the debt to FRA (described at 43 a) above) (if any), to be determined;
- b) The line of credit in favour of WLE: \$6,000,000 (USD);
- c) Train Derailment Claims: to be determined;

VI. RELIEF SOUGHT

50. In light of the insolvent situation of the Petitioner resulting from its secured claims and its current liabilities as well as its potential liability related to the various claims or potential claims, including the Train Derailment Claims and other claims described above, the Petitioner urgently requires a stay of proceedings and the opportunity to attempt to resolve, compromise or otherwise address in a single forum the various claims and potential claims;

51. Given further that the potential liability of the Non-Petitioner Defendants, other members of the Petitioner's Corporate Group, their respective directors, officers and employees, with respect to the various claims or potential claims are derivative of and directly linked to the various claims made or potential claims to be made against the Petitioner, a stay of proceedings in respect of Non-Petitioner Defendants, the other members of the Petitioner's Corporate Group, their respective directors, officers and employees, is also necessary in order to provide the Petitioner with the opportunity to fully consider and implement a successful Plan and resolution of the current situation for the benefit of all its stakeholders;

52. The successful Plan of the Petitioner and the resolution of the various claims and the potential claims will require multi-party negotiations and discussions. The CCAA proceedings will provide a reasonable and effective forum within which these negotiations and discussions may take place. In addition, the CCAA proceedings will avoid a multiplicity of proceedings against the Petitioner and will provide one forum for dealing with all the liabilities of the Petitioner. This stability is necessary to preserve the status of the Petitioner and the continuation of the operations, the whole in order to allow

a maximization of the value of the assets and indemnities for the numerous stakeholders;

53. As indicated above, concurrently with the present proceedings, it is anticipated that the Petitioner's parent MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;
54. The Petitioner and MM&AR will be seeking to devise a process dealing with the claims and potential claims in both jurisdictions in order to facilitate the process;

VII. MONITOR AND ADMINISTRATION CHARGE AND DIRECTORS' CHARGE

55. The Petitioner proposes that Richter Advisory Group Inc. ("Richter") (Gilles Robillard, C.A., C.I.R.P.) be appointed Monitor, the whole pursuant to the CCAA;
56. Richter has accepted its appointment as Monitor of the Petitioner, the whole as appears from the letter of consent from the Monitor filed in support hereof as **Exhibit R-12**;
57. Petitioner respectfully submits that it is appropriate that the Monitor be vested with the authority and protection required herein in order to allow it to fulfill its duties pursuant to the CCAA, the whole in accordance with the order to be rendered pursuant to the present Petition;
58. As security for the payment of the Monitor's fees and disbursements, including legal fees, as well as for the payment of the fees and the disbursements of Petitioner's counsel and other professionals as set forth in paragraph 38 of the conclusions of the present Petition, it is necessary that a prior charge be granted on the whole of Petitioner's assets in favor of said professionals (the "**Administration Charge**");
59. Moreover, in light of the circumstances, in order to be able to maintain temporarily the operations and seek a successful plan, the continued participation of the Petitioner's directors and officers is required. It is therefore appropriate that Initial Order to be granted pursuant hereto include the protections sought in the conclusions of the present Petition, namely, the orders related to the indemnification and charge in favour of its directors and officers (the "**Directors' Charge**");
60. The Petitioner seeks a \$150,000 Directors' Charge, the whole as set forth more fully at paragraph 22 and following of the conclusions of this Petition. The amount of the Directors' Charge was established by the Petitioner and reviewed by the Monitor, taking into account direct and indirect payroll obligations, commissions, vacation pay, deductions at source and sales taxes remittances;

61. Therefore, the Petitioner respectfully submits that the Administration Charge and the Directors' Charge, as defined in the conclusions hereof, must be granted pursuant to the conclusions of the present Petition;

VIII. EXTRA-PROVINCIAL APPLICATION

62. In light of the fact that the Petitioner is a Nova Scotia company with security registered also in Nova Scotia, given the anticipated concurrent proceedings being taken by MM&AR under Chapter 11 of the U.S. Bankruptcy Code in the U.S. and that the Petitioner and/or the Monitor may also seek to make an application under Chapter 15 of the U.S. Bankruptcy Code and given that claims have also been instituted in the United States in relation to the derailment, Petitioner requests that this Honourable Court seek the assistance of all Canadian and foreign courts in the execution of the order to be rendered hereon and of any other order to be rendered in this matter;
63. The Petitioner requests that this Honourable Court render any and all orders that it may deem necessary in light of the circumstances;

IX. CONCLUSION

64. The Petitioner believes that a better result for all stakeholders of the Petitioner will be achieved through the Plan than would be the case under any other available alternative. The order sought by the Petitioner will provide it with the necessary opportunity to address the claims and potential claims on a global basis and to assess and implement a successful restructuring strategy with all of its stakeholders, the whole with the goal of maximizing value for all of the stakeholders;
65. The initial order being sought by the Petitioner is based on the standard CCAA Initial Order issued by the Superior Court of Québec, Commercial Division (without however the standard provisions relating to interim financing as the Petitioner is not requesting any interim financing at this time but is reserving its rights to do so), and any changes thereto are underlined in the Draft Initial Order filed in support hereof as **Exhibit R-13**;
66. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for the presentation of this Petition are proper and sufficient;
67. Again, given the urgency of the situation, the Petitioner submits that it is essential that the execution of the order requested herein be granted notwithstanding appeal;
68. The present Petition is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the Petition.
2. **ISSUE** an order pursuant to the CCAA (the "Order"), divided under the following headings:
 - a) Service;

- b) Application of the CCAA;
- c) Effective Time;
- d) Plan of Arrangement;
- e) Stay of Proceedings against the Petitioner and the Property and against Non-Petitioner Defendants;
- f) Stay of Proceedings against the Directors and Officers;
- g) Possession of Property and Operations;
- h) No Exercise of Rights or Remedies;
- i) No Interference with Rights;
- j) Continuation of Services;
- k) Non-Derogation of Rights;
- l) Directors' and Officers' Indemnification and Charge;
- m) Restructuring;
- n) Powers of the Monitor;
- o) Priorities and General Provisions Relating to CCAA Charges;
- p) General.

Service

3. **DECLARE** that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

Application of the CCAA

4. **DECLARE** that the Petitioner is a debtor company to which the CCAA applies.

Effective time

5. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "Effective Time").

Plan of Arrangement

6. **DECLARE** that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "Plan") in accordance with the CCAA.

Stay of Proceedings against the Petitioner and the Property

7. **ORDER** that, until and including September 6, 2013, or such later date as the Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Petitioner, or affecting the Petitioner's business operations and activities (the "Business") or the Property (as defined herein below), including as provided in paragraph 15 herein below except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, the whole subject to subsection 11.1 CCAA. Without limiting the generality of the foregoing, Proceedings include all proceedings in Canada and in the United States of America or elsewhere taken or that may be taken against, *inter alia*, the Petitioner and/or Montreal Maine & Atlantic Railway Ltd. ("MM&AR"), and/or their liability insurer ("Liability Insurer") and/or other members of the Petitioner's corporate group (the "Petitioner's Corporate Group") and/or against any of the respective directors, officers or employees of any of the members of the Petitioner's Corporate Group, in connection with the derailment that occurred on July 6, 2013 in Lac-Mégantic, province of Québec, that involved the derailment of the freight train operated by the Petitioner (the "Derailment") and include, without limitation, proceedings with respect to the claims set forth at paragraph 25 of the Petition, including the Order issued by the Minister of Environment on July 29, 2013, pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("EQA") (Exhibit R-4) (the "Cleanup Order") and any other claim made or that may be made in anyway related to the Derailment (collectively, the "Train Derailment Claims"). The members of Petitioner's Corporate Group are listed in Schedule "A" hereto and the members of Petitioner's Corporate Group, and their respective directors, officers or employees and the Liability Insurer, who are defendants to such proceedings are listed in Schedule "B" hereto and are collectively referred to herein as the "Non-Petitioner Defendants".

Stay of Proceedings against the Directors and Officers

8. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3)CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment or performance of such obligation or which relate to the Derailment.

Possession of Property and Operations

9. **ORDER** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this Order including, but not limited, to paragraph 25 hereof.
10. **AUTHORIZE** the Petitioner to continue to carry on its business and financial affairs in a manner consistent with past periods and the commercially reasonable preservation thereof;
11. **ORDER** that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individuals self-employed contractors, agents, experts, accountants, counsels, and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
12. **ORDER** that the Petitioner shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - a) all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees on or after the date of this Order and reimbursements of expenses payable to officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - b) the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
 - c) subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients;
13. **ORDER** that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order;
14. **ORDER** that, except as otherwise provided to the contrary herein, the Petitioner shall remit, in accordance with legal requirements, or pay:
 - a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in

respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension plan, and (iv) income taxes;

- b) amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- c) all goods and services or other applicable sales taxes (collectively "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Petitioner.

No Exercise of Rights or Remedies

- 15. **ORDER** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, including the Cleanup Order, are hereby stayed and suspended except with leave of this Court.
- 16. **DECLARE** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

- 17. **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resile, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor, or with leave of this Court.

Continuation of Services

18. **ORDER** that during the Stay Period and subject to paragraph 20 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating such agreements or the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.
19. **ORDER** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.
20. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

21. **ORDER** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "Issuing Party") at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Directors' and Officers' Indemnification and Charge

22. **ORDER** that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
23. **ORDER** that the Directors of the Petitioner shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$150,000.00 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 22 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 39 and 40 of this Order.
24. **ORDER** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 22 of this Order.

Restructuring

25. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
 - a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
 - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
 - c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$10,000 or \$50,000 in the aggregate;
 - d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or

failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;

e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and

f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.

26. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 25.e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

27. **ORDER** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.

28. **DECLARE** that, in order to facilitate the Restructuring, the Petitioner may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute and may pursue, with the assistance of the Monitor, the Restructuring, including, subject to Court approval, the settlement or other resolution of the claims related to the Derailment.

29. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "Third Party"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation

or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

Powers of the Monitor

30. **ORDER** that Richter Advisory Group Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in *La Presse* and the *Globe & Mail* newspapers and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- b) shall monitor the Petitioner's receipts and disbursements;
- c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan, including, without limitation, participating as the Petitioner considers appropriate in any discussion and negotiation with creditors, claimants or others and assisting and facilitating the settlement or other resolution of the claims related to the Derailment.
- g) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings or the settlement or other resolution of the claims related to the Derailment, and any other matter deemed by the Monitor to be relevant to this proceeding, within

the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;

- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- k) may assist the Petitioner with respect to any insolvency proceedings commenced by or with respect to any other member of its corporate group (including MM&AR) in any foreign jurisdiction (collectively, "Foreign Proceedings") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Petitioner;
- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganization or other proceedings outside of Canada;
- m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

31. **ORDER** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage or control any of the business and financial affairs of the Petitioner and nothing in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and collectively, the "Possession"), or require or obligate the Monitor to occupy, to take Possession of any Property or any source of contaminant which may be environmentally contaminated or contain a dangerous or designated substance, or (b) contain a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance in respect of which obligations of any sort may be imposed under any legislation enacted for the protection, conservation, enhancement, remediation or rehabilitation of the indoor or outdoor environment, or relating to the disposal of waste or other contamination including, without limitation, the Canadian Environmental Protection Act, the Transportation of Dangerous Goods Act, the Environment Quality Act (Québec), the Act Respecting Occupational Health and Safety (Québec) or the regulations thereunder, or under any other federal or provincial

legislation or rule of law or equity, in any jurisdiction affecting the indoor or outdoor environment or the transportation of dangerous goods (collectively, "Environmental Laws"). For greater certainty, the Monitor shall not be deemed, as a result of this Order, to be in Possession within the meaning of any Environmental Laws of any Property or source of contaminant.

32. **ORDER** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
33. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
34. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
35. **DECLARE** that, if the Monitor acts in good faith and takes reasonable care in preparing the reports referred to herein, the Monitor is not liable for loss or damage to any Person resulting from that person's reliance on any such report.
36. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30 (i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
37. **ORDER** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
38. **DECLARE** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$1,500,000 (the "Administration Charge"), having the priority established by paragraphs 39 and 40 hereof.

Priorities and General Provisions Relating to CCAA Charges

39. **DECLARE** that the priorities of the Administration Charge and any possible charge in favor of the Directors (collectively, the "CCAA Charges"), as between them with respect to any Property to which they apply, shall be as follows:
 - a) first, the Administration Charge;
 - b) second, the Directors' Charge;
40. **DECLARE** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind or deemed trusts (collectively, the "Encumbrances") affecting the Property charged by such Encumbrances.
41. **ORDER** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
42. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
43. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:
 - c) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
 - d) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
44. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property

made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

45. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

General

46. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
47. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
48. **DECLARE** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
49. **DECLARE** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
50. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.

51. **DECLARE** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the order on notice only to each other and any other Person directly affected thereby, if any.
52. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vauclair, phone: 514-982-4528, fax: 514-284-2046, svaclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A 3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
53. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
54. **DECLARE** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court, for which the Monitor shall be the foreign representative of the Petitioner, including, but without limitation, in respect of proceedings that may be commenced, the Chapter 15 of the U.S. Bankruptcy Code and any ancillary relief in respect thereto. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
55. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

56. **ORDER the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.**

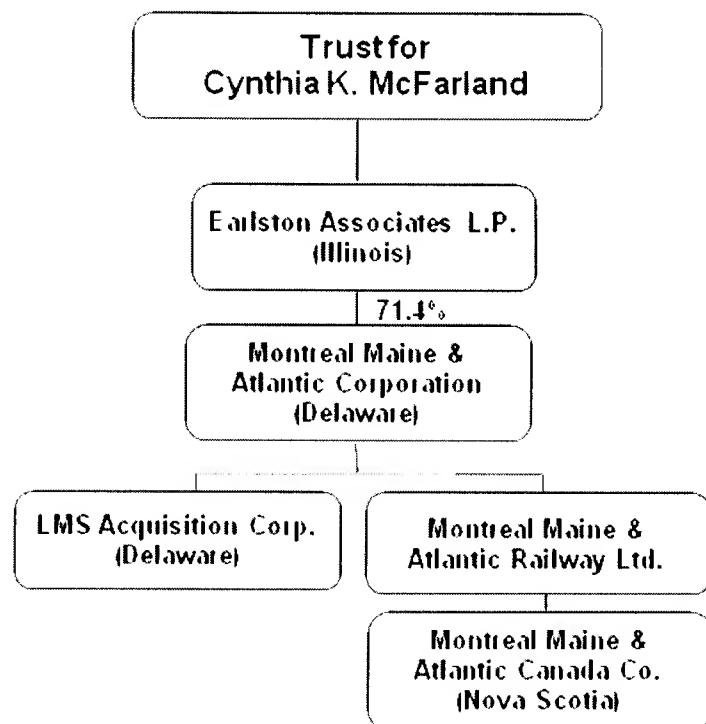
THE WHOLE WITHOUT COSTS, save and except in case of contestation.

MONTREAL, August 6, 2013


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

SCHEDULE « A »

MONTREAL, MAINE & ATLANTIC CORPORATE GROUP



SCHEDULE « B »

NON PETITIONNERS DEFENDANTS :

MONTREAL, MAINE & ATLANTIC CORPORATION

MONTREAL, MAINE & ATLANTIC RAILWAY LTD

EARLSTON ASSOCIATES L.P.

EDWARD BURKHARDT

ROBERT GRINDROD

GAYNOR RYAN

DONALD GARNER JR.

JOE McGONIGLE

THOMAS HARDING

XL INSURANCE COMPANY LIMITED

XL GROUP PLC

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°:

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

**MONTRÉAL, MAINE & ATLANTIC CANADA CO.
(MONTRÉAL, MAINE & ATLANTIQUE CANADA
CIE)**

PETITIONER

and

**RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)**

PROPOSED MONITOR

NOTICE OF PRESENTATION

TO: **SERVICE LIST (see attached)**

TAKE NOTICE that the present *Petition for the issuance of an Initial Order* will be presented for adjudication before one of the honourable Judges of the Superior Court of Quebec, sitting in practice division, on **August 7, 2013**, in room 16.12 of the Courthouse located at 1 Notre-Dame St. East, Montreal, at 2:00 p.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, August 6, 2013


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°:

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
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PROPOSED MONITOR

SERVICE LIST

**MONTRÉAL, MAINE & ATLANTIC CANADA Co.
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)**

Me Pierre Legault
GOWLING LAFLEUR HENDERSON LLP
1 Place Ville Marie
Suite 3700
Montréal, Québec H3B 3P4
Tel: 514-392-9599
Fax: 514-876-9599
E-mail: pierre.legault@gowlings.com

Me Denis St-Onge
GOWLING LAFLEUR HENDERSON LLP
1 Place Ville Marie
Suite 3700
Montréal, Québec H3B 3P4
Tel: 514-392-9519
Fax: 514-876-9519
E-mail: denis.st-onge@gowlings.com

Me Patrice Benoit
GOWLING LAFLEUR HENDERSON LLP
1 Place Ville Marie
Suite 3700

	<p>Montréal, Québec H3B 3P4 Tel: 514-392-9550 Fax: 514-876-9550 E-mail: Patrice.benoit@gowlings.com</p> <p>Me Louise Lalonde GOWLING LAFLEUR HENDERSON LLP 1 Place Ville Marie Suite 3700 Montréal, Québec H3B 3P4 Tel: 514-392-9557 Fax: 514-876-9557 E-mail: louise.lalonde@gowlings.com</p> <p>Me Derrick Tay GOWLING LAFLEUR HENDERSON LLP 1 First Canadian Place 100 King Street West Suite 1600 Toronto, Ontario M5X 1G5 Tel: 416-369-7330 Fax: 416-862-7661 E-mail: derrick.tay@gowlings.com</p>
MONITOR	<p>RICHTER ADVISORY GROUP INC. C/o M. Gilles Robillard, c.a. 2 Place Alexis Nihon 22th Floor Montreal, Quebec H3Z 3C2 Tel: (514) 934-3484 Fax: (514) 934-3477 E-mail: grobillard@rsmrichter.com</p> <p>Attorneys for RICHTER ADVISORY GROUP INC.:</p> <p>Me Sylvain Vauclair WOODS LLP 2000 McGill College Ave. Suite 1700 Montreal, Quebec H3A 3H3 Tel: (514) 982-4528 Fax: (514) 284-2046 E-mail: svauclair@woods.qc.ca</p>

CLASS ACTION:	Me Daniel E. Larochele 5066, Frontenac Lac-Mégantic, Quebec G6B 1H3 Tel : (819) 583-5686 Fax : (819) 583-5959 E-mail: daniellarochelle@axion.ca
CONSUMER LAW GROUP	Me Jeffrey Orenstein ORENSTEIN DROIT INC. 4150 Ste-Catherine St. West Suite 330 Montréal, Québec, H3Z 2Y5 Tel: 514-266-7863 ext. 220 Fax: 514-868-9690 E-mail: jorenstein@clg.org
MINISTÈRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT, DE LA FAUNE ET DES PARCS	Me Mélissa Devost DIRECTION GÉNÉRALE DES AFFAIRES JURIDIQUES ET LÉGISLATIVES 675 René-Lévesque Blvd E. Quebec, Quebec G1R 5V7 Tel: 418-521-3816 ext. 4512 Fax: 418-646-0908 E-mail: melissa.devost@mddefp.gouv.qc.ca
MINISTÈRE DE LA JUSTICE DU QUÉBEC	Me Frédéric Maheux DIRECTION GÉNÉRALE DES AFFAIRES JURIDIQUES ET LÉGISLATIVES 300 Jean-Lesage Blvd. Suite 1.03 Quebec, Quebec G1K 8K6 Tel. : 418-649-3524 ext. 42073 Fax : 418-646-1656 E-mail: frederic.maheux@justice.gouv.qc.ca
MINISTÈRE DE LA SÉCURITÉ PUBLIQUE	Me Pierre Robitaille DIRECTION DES AFFAIRES JURIDIQUES - SÉCURITÉ PUBLIQUE 2525, Laurier Blvd 5th Floor Quebec, Quebec G1V 2L2 Tel.: 418 646-6777 ext. 30243 Fax: 418 644-5417 E-mail: pierre.robitaille@msp.gouv.qc.ca
VILLE DE MÉGANTIC	Me Louis Coallier DUFRESNE HÉBERT COMEAU INC. C.P. 391 800 Place Victoria

	<p>Suite 4500 Montreal, Quebec H4Z 1J2 Tel : (514) 392-5724 Fax : (514) 331-0514 E-mail: lcoallier@dufresnehebert.ca</p>
XL INSURANCE COMPANY LIMITED XL GROUP PLC	<p>Me Dominic Naud CLYDE & CIE CANADA S.E.N.C.R.L. 630 René-Lévesque W. Suite 1700 Montreal, Quebec H3B 1S6 Tel: 514-843-7481 Fax: 514-843-6110 E-mail: dominic.naud@clydeco.ca</p> <p>Me Brendan O'Neill GOODMANS LLP Bay Adelaide Centre 333 Bay Street Suite 3400 Toronto, Ontario M5H 2S7 Tel: 416.849.6017 Fax: 416.979.1234 E-mail: boneill@goodmans.ca</p>
DIRECTORS OF THE CORPORATE GROUP	<p>Me Laurent Namiash DENTONS LLP 1 Place Ville-Marie 39th Floor Montréal, Quebec H3B 4M7 Tel: 514-878-8818 E-mail: laurent.nahmiash@dentons.com</p> <p>Me Roger Simard DENTONS LLP 1 Place Ville-Marie 39th Floor Montréal, Quebec H3B 4M7 Tel: 514-878-8800 Fax: 514-866-2241 E-mail: roger.simard@dentons.com</p> <p>Me Shayne Kukulowicz DENTONS LLP 77 King Street West Suite 400 Toronto-Dominion Centre Toronto Ontario M5K 0A1 Tel: 416 863 4740 E-mail: shayne.kukulowicz@dentons.com</p>

MONTREAL MAINE & ATLANTIC RAILWAY LTD.	<p>Mr. Roger Clement VERRILL DANA One Portland Square Portland, ME 04112-0586 Tel: 207-253-4412 Fax: 207-253-4413 E-mail: rclement@verrilldana.com</p>
FEDERAL RAILROAD ADMINISTRATION	<p>Ms. Kathryn Hurd Office of Chief Counsel FEDERAL RAILROAD ADMINISTRATION Tel: 202-366-1118 E-mail: kathryn.hurd@dot.gov</p> <p>Ms. Casey Symington Office of Chief Counsel FEDERAL RAILROAD ADMINISTRATION Tel: 202-493-6349 E-mail: Casey.Symington@dot.gov Casey.Symington@dot.gov</p>
WHEELING & LAKE ERIE RAILWAY COMPANY	<p>Mr. George J. Marcus, Esq MARCUS, CLEGG & MISTRETTA One Canal Plaza Suite 600 Portland, Maine 04101 E-mail: gjm@mcm-law.com</p> <p>Mr. Michael Barron FLETCHER & SIPPEL 29 N. Wacker Dr. Ste 920 Chicago, IL 60606-2832 Tel: 312-252-1511 Fax: 312-252-2400 E-mail: mbarron@fletcher-sippel.com</p>

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°:

(Sitting as a court designated pursuant to the
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C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

**MONTRÉAL, MAINE & ATLANTIC CANADA CO.
(MONTRÉAL, MAINE & ATLANTIQUE CANADA
CIE)**

PETITIONER

and

**RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)**

PROPOSED MONITOR

LIST OF EXHIBITS

- Exhibit R-1: Class action instituted against the Petitioner MM&AR, the Liability Insurer and others;
- Exhibit R-2: List of complaints at law;
- Exhibit R-3: *En liasse*, letters of demand from the Municipality of Lac-Mégantic;
- Exhibit R-4: *En liasse*, order issued by the Minister of Sustainable Development, Environment, Wildlife and Parks dated July 29, 2013 and letter from the Ministère de la justice of the same date;
- Exhibit R-5: Notice of claim from Tafisa Canada;
- Exhibit R-6: Notice of intent to file a claim from Western Petroleum Company;
- Exhibit R-7: Letter of demand from Canadian Pacific Railway;
- Exhibit R-8: List of letters of demand;
- Exhibit R-9: Petitioner's unaudited balance sheet as at July 31, 2013;
- Exhibit R-10: Statement of Petitioner's projected cash flow;

Exhibit R-11: Extracts of the computerized records of the PPRS and the RPMRR;

Exhibit R-12: Letter of consent from the Monitor;

Exhibit R-13: Draft initial order.

MONTREAL, August 6, 2013


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

N°

**SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

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**IN THE MATTER OF THE PLAN OF
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CO. (MONTREAL, MAINE & ATLANTIQUE
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PETITIONER

RICHTER ADVISORY GROUP INC.
(RICHTER GROUPE CONSEIL INC.)

PROPOSED MONITOR

BL0052

**PETITION FOR THE ISSUANCE OF AN
INITIAL ORDER**
**(Sections 4, 5 and 11 of the Companies'
Creditors Arrangement Act,
R.S.C. 1985, c. C-36 ("CCAA"))**

ORIGINAL

Me Denis St-Onge
Gowling Lafleur Henderson LLP
1 Place Ville Marie, 37th Floor
Montreal, Québec
Canada H3B 3P4
Tel.: (514) 392-9519 / Fax: (514) 878-1450
denis.st-onge@gowlings.com

File No.: 02381115

c/o 3509